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THE ENFORCEMENT OF JUDGMENTS AGAINST A STATE.

IN JUNE, 1915, the Supreme Court of the United States in the well-known suit of Virginia *v.* West Virginia [1] for an apportionment of the state debt rendered a decree in favor of Virginia for $12,393,929.50. The defendant has not yet paid the amount decreed, and while it is not to be presumed that any state of the Union would refuse to abide by the judgments of the Supreme Court and satisfy its decrees, this long drawn out controversy has attracted the attention of the legal profession to the question of the power of the Supreme Court to enforce its decrees against a state. In the early days of the Republic it might well have been doubted whether the states would regard themselves as bound to obey unacceptible judgments of the court; but today that a state should so far outlaw herself as to refuse to do so seems almost unthinkable. Nevertheless, it may be of interest to determine, if possible, whether the Supreme Court is able to enforce its decrees against an unwilling defendant state.

The Constitution grants to the Supreme Court original jurisdiction of suits to which a state is a party, and in this grant there would seem to be involved—by reasonable, if not necessary, implication—power to enforce the judgments of the court. Certainly the grant is far from effective if such power is not included. It would seem, therefore, that the Supreme Court has power to enforce its judgments against a state, though it may be a question in a given case as to how this shall be done. More-

[1] 238 U. S. 202.

over, if this power be not considered a necessary incident of jurisdiction, it is probable that Congress has power to supply it under its express power "to make all laws which shall be necessary and proper for carrying into execution * * * all other powers vested by this Constitution in the government of the United States or any department or officer thereof." However, Congress has not legislated on the subject.

The subject of the federal jurisdiction of suits to which a state is a party is very briefly touched upon in the *Federalist*. In paper Number 80, the scope of the federal judicial power in general is considered and the several objects of the judicial power are stated. In Number 81, in discussing the original jurisdiction of the Supreme Court in cases in which a state is a party, Mr. Hamilton says:

> "Though it may rather be a digression from the immediate subject of this paper, I shall take occasion to mention here a supposition which has excited some alarm upon very mistaken grounds. It has been suggested that an assignment of the public securities of one state to the citizens of another, would enable them to prosecute that state in the federal courts for the amount of those securities; a suggestion which the following considerations prove to be without foundation. It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every state in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the states, and the danger intimated must be merely ideal. The circumstances which are necessary to produce an alienation of state sovereignty were discussed in considering the article of taxation, and need not be repeated here. A recurrence to the principles there established will satisfy us, that there is no color to pretend that the state governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force. They confer no right of action, independent

> of the sovereign will. To what purpose would it be to authorize suits against a state for the debts they owe? How could recoveries be enforced? It is evident it could not be done without waging war against the contracting state; and to ascribe to the federal courts, by mere implication, and in destruction of a pre-existing right of the state governments, a power which would involve such a consequence, would be altogether forced and unwarrantable."

In weighing this opinion of Hamilton it should be borne in mind that he was writing not merely as an expounder of the Constitution but as an advocate for its adoption, and he was especially concerned in overcoming the fears of those who were alarmed lest the federal power would too far encroach upon that of the states. And his views as to the suability of a state by a citizen of another state were rejected by the Supreme Court in the case of Chisholm *v.* Georgia.[2] The authority of that case has, of course, been overcome by the adoption of the Eleventh Amendment, so far as suits by private individuals against a state are concerned; but the decision still stands in so far as it held that by adopting the Constitution the states have consented to be sued in the cases enumerated in the Constitution. And by repeated decisions this proposition has become a commonplace of law. But in the present connection the suggestion of Hamilton, that a recovery against a state could be enforced only by waging war against the state, is interesting. This objection applies equally, of course, whether the recovery be by an individual or by another state. We believe, however, that Hamilton's view is not in harmony with modern opinion on this subject.

Very few cases have arisen in which this question has been involved. In the case of Chisholm *v.* Georgia, the plaintiff, a citizen of South Carolina, sued the state of Georgia on a private claim, and judgment by default was rendered against the state. The legislature of Georgia indignantly passed a statute pronouncing the penalty of death against anyone who would presume to enforce the judgment within the state. The judgment was never enforced. This decision, as is well known, led to the adoption of the Eleventh Amendment depriving the court of

[2] 2 Dall. 419.

jurisdiction of suits by private individuals against a state, and the adoption of this amendment may have been the reason why no attempt was made to enforce the judgment. In the later case of Worcester *v.* Georgia, [3] in 1832, the Supreme Court, by Chief Justice Marshall, ordered the release of Worcester by the state authorities, on the ground that the state law under which he was imprisoned was unconstitutional. The governor of Georgia declared that he would rather hang the prisoner than liberate him under the mandate of the Supreme Court. President Andrew Jackson, who was the political enemy of Marshall, refused to uphold the court, and is reported to have said: "John Marshall has made the decision, now let him execute it." No attempt at enforcement seems ever to have been made, but at the expiration of eighteen months the prisoner was released by the state authorities.

Long before this, however, the power of the court to maintain its authority had been expressly asserted by Marshall in a suit growing out of the capture of a British ship as prize during the Revolutionary War.[4] The state court of admiralty of Pennsylvania took jurisdiction of the cause and made an award of the prize money, the state of Pennsylvania being one of the participants in the benefits of the award. Other claimants appealed from this award to the court of appeals established by Congress, which reversed the action of the state court. The state court refused to recognize the authority of the congressional court and ordered the money to be deposited with the state treasurer. Congress deemed it unwise at the time to assert its authority; but some years after the establishment of the federal government under the Constitution, the adverse claimants brought suit in the federal district court for the district of Pennsylvania against the personal representatives of the state treasurer and obtained a decree in their favor.

After the federal district court had rendered its decree the legislature of Pennsylvania passed an act asserting its own jurisdiction and authorizing the governor of the state to take such steps as he might deem necessary for the protection of the rights

[3] 6 Pet. 515.

[4] United States *v.* Peters, 5 Cranch 115.

of the state. In these circumstances the federal district judge, in order to avoid a conflict between the two governments, refused to grant an attachment in execution of his own decree. Thereupon an application was made, in 1809, to the Supreme Court for a mandamus directing the judge to issue the attachment. The writ was awarded, and in his opinion Chief Justice Marshall, after stating that the court had considered the question "with great attention and with serious concern," went on to say:

> "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under these judgments, the Constitution itself becomes a mockery, and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals. So fatal a result must be deprecated by all; and the people of Pennsylvania, not less than the citizens of every other state, must feel a deep interest in resisting principles so destructive of the Union, and in averting consequences so fatal to themselves. * * * Since, then, the state of Pennsylvania had neither possession of nor right to the property on which the sentence of the district court was pronounced, and since the suit was neither commenced nor prosecuted against that state, there remains no pretext for the allegation that the case is within the Amendment [Eleventh] which has been cited; and, consequently, the state of Pennsylvania can possess no constitutional right to resist the legal process which may be directed in this cause. It will be readily conceived that the order which this court is enjoined to make by the high obligations of duty and of law is not made without extreme regret at the necessity which has induced the application. But it is a solemn duty and therefore must be performed. A peremptory mandamus must be awarded."

It will be noted that this was not a suit against the state, but was rather a case of conflict of jurisdiction. However, the effect was much the same; and the state, as one of the claimants of the fund, was in fact interested in the controversy. After the mandamus was awarded, service of attachment was resisted by the state militia, who had been called out by the governor under the authority of the act of the legislature above mentioned. The federal marshal then appointed a day for the service of the warrant and summoned a posse of two thousand men to his assist-

ance. The governor then appealed to President Madison; but he upheld the Supreme Court, and the state thereupon gave up the fight. The legislature appropriated money to satisfy the decree of the federal court. The state militia officers were tried for obstructing federal process and were convicted, but the sentence was remitted by the President.[5]

In considering the question of the enforcement of judgments against a state, it is important to distinguish between those cases in which action or inaction by the state itself is to be compelled and those in which the judgment may be enforced by controlling the acts of individuals. Cases of the latter class present, of course, no difficulty. Wherever the court by injunction or other process directed against individuals—whether state officers or private persons—can enforce its decree, the sovereignty of the state is not immediately involved. A suit by one state against another for an injunction affords an instance of suits of this class. There have been two such suits: one, the suit of Missouri against Illinois, in 1906, to restrain the discharge of sewage through the Chicago drainage canal into the Mississippi River,[6] and the other, the suit brought in the same year by the state of Kansas against the state of Colorado to enjoin the diversion by the latter state of the water of the Arkansas River.[7] Since a state can act only by individuals, and the acts complained of were the acts of individuals, it would seem that an injunction in either of these cases, or in any other case, could readily be enforced by contempt proceedings against individuals guilty of violating the decree. In neither of the suits above mentioned, however, was the injunction granted, and hence the question of enforcement was not presented.

Most of the suits between states have been suits to determine disputed boundaries, of which there have been a considerable number. In these suits the court appoints its own commissioners to fix and mark the adjudged boundary, thus enforcing its own decree. And the court has ample power to protect such boundary against the acts of individuals and to secure to all concerned the benefits of the boundary as adjudged.

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[5] CARSON, HISTORY OF SUPREME COURT, 214.

[6] Missouri *v.* Illinois, 200 U. S. 496, 202 U. S. 598.

[7] Kansas *v.* Colorado, 206 U. S. 46.

The first suit of this kind was the case of Rhode Island *v.* Massachusetts,[8] in which it was held that the Supreme Court has jurisdiction of a suit in equity brought by one state against another to determine a question of disputed boundary. The suit was originally filed in 1832, and was finally dismissed on the merits in 1845. Massachusetts had moved to dismiss the bill for want of jurisdiction but the motion to dismiss was overruled. One of the grounds of objection was that "though the court may render, they cannot execute a decree without an act of Congress in aid." The court disposed of this objection very briefly, remarking that, "In testing this objection by the common law, there can be no difficulty in decreeing, as in Penn v. Baltimore [1 Ves. 444]; mutatis mutandis," then setting forth that the court could determine the rights of the parties, appoint commissioners to ascertain and mark the line as determined and maintain the boundary thus established as binding on the citizens of both states. In so holding, the court, by Baldwin, J., said:

> "This court cannot presume that any state which holds prerogative rights for the good of its citizens, and by the constitution has agreed that those of any other state shall enjoy rights, privileges, and immunities in each, as its own do, would either do wrong, or deny right to a sister state or its citizens, or refuse to submit to those decrees of this Court, rendered pursuant to its own delegated authority; * * * we ought not to doubt as to the course of a state of this Union; as a contrary one would endanger its peace, if not its existence."

The class of cases in which the question of enforcing the judgment against a state may become one of real difficulty is that in which the suit is brought to recover money from the defendant state. There have been five of these suits brought in the Supreme Court. The first was the case of Chisholm *v.* Georgia, already stated, in which a judgment was entered against the state but no attempt was made to enforce it. In United States *v.* North Carolina,[9] the court took jurisdiction of an action by the United States against North Carolina to recover interest on

[8] 12 Pet. 657. For final disposition of the suit, see 4 How. 591.
[9] 136 U. S 211.

state bonds. The question of jurisdiction was not raised; but the court decided the case on its merits, holding that the defendant was not liable. As the decision was in favor of the defendant, the question of enforcing the judgment did not arise. So, also, in United States *v.* Michigan, [10] the court sustained a bill in equity for an accounting and directed a judgment in favor of the United States in case the defendant refused to answer the bill. This suit seems to have afterwards been dismissed at the instance of the Solicitor General of the United States.[11]

In South Dakota *v.* North Carolina, [12] the plaintiff, as the donee of certain bonds of the defendant state secured by a mortgage of railroad stock belonging to the state, sued to compel payment of the bonds and a subjection of the mortgaged property to the satisfaction of the debt. In delivering the opinion of the court, Brewer, J., after disposing of certain preliminary questions and reviewing prior decisions bearing on the question of jurisdiction, said:

> "But we are confronted with the contention that there is no power in this court to enforce such a judgment, and such lack of power is conclusive evidence that, notwithstanding the general language of the Constitution, there is an implied exception of actions brought to recover money. The public property held by any municipality, city, county, or state is exempt from seizure upon execution because it is held by such corporation, not as a part of its private assets, but as a trustee for public purposes. *Meriwether* v. *Garrett,* 102 U. S. 472, 513. As a rule no such municipality has any private property subject to be taken upon execution. A levy of taxes is not within the scope of the judicial power except as it commands an inferior municipality to execute the power granted by the legislature."

The court then reviewed some earlier decisions bearing on the general question, and continued:

> "We have, then, on the one hand the general language of the Constitution vesting jurisdiction in this court over 'controversies between two or more States', the history of that jurisdictional clause in the convention, the cases of *Chisholm*

[10] 190 U. S. 379.
[11] 203 U. S. 601.
[12] 192 U. S. 286.

> v. *Georgia, United States* v. *North Carolina* and *United States* v. *Michigan,* (in which this court sustained jurisdiction over actions to recover money from a State,) the manifest trend of other decisions, the necessity of some way of ending controversies between States, and the fact that this claim for the payment of money is one justiciable in its nature; on the other, certain expressions of individual opinions of justices of this court, the difficulty of enforcing a judgment for money against a State, by reason of its ordinary lack of private property subject to seizure upon execution, and the absolute inability of a court to compel a levy of taxes by the legislature. Notwithstanding the embarrassments which surround the question it is directly presented and may have to be determined before the case is finally concluded, but for the present it is sufficient to state the question with its difficulties.
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> "There is in this case a mortgage of property, and the sale of that property under a foreclosure may satisfy the plaintiff's claim. If this should be the result there would be no necessity for a personal judgment against the State. * * * Equity is satisfied by a decree for a foreclosure and sale of the mortgaged property, leaving the question of a judgment over for any deficiency, to be determined when, if ever, it arises. And surely if, as we have often held, this court has jurisdiction of an action by one State against another to recover a tract of land, there would seem to be no doubt of the jurisdiction of one to enforce the delivery of personal property."

The opinion concluded with a decree against the defendant for $27,400, and, in default of payment, directed a sale by the marshal of the Court at public auction of all the interest of the defendant in the mortgaged property, such sale to be made, after due advertisement, at the east front door of the capitol building at Washington.

The subsequent history of this case is related by Justice Brewer in a public address as follows:[13]

> "If the amount received from the sale of the stock had not paid the bonds, the question would have been presented whether we could render a money judgment against a state;

[13] REPORT OF THE LAKE MOHONK CONFERENCE ON INTERNATIONAL ARBITRATION, 1907, p. 170.

and, if so, how it could be enforced. We could not compel the legislature of North Carolina to meet and pass an act; the marshal could not levy upon the public buildings of the state: what would be the significance of a judgment which the court was powerless to enforce? You may remember as an historical fact that Andrew Jackson once said, 'John Marshall has rendered a judgment, now let him enforce it if he can.'

"The day before that fixed for the sale of these bonds the attorney-general of North Carolina came to my house, for I was the organ of the court in delivering the opinion, and said that he had been sent by the governor to pay the full amount that we had found to be due: that the state did not intend to raise any question as to what could or should be done in case of a deficiency after the sale of the stock, and that inasmuch as the court created by the Constitution and charged with the duty of determining controversies between the states had declared that a certain sum was due from North Carolina to South Dakota he was directed by the state to pay that; every dollar, as well as the costs of the case. And he then and there did so.

"Now I submit that there was a response of public opinion declaring that the judgments of that court in this nation which is charged with the settlement of controversies between two states should be respected, for the defeated state, although feeling aggrieved by the judgment, yet waived all question as to its enforcement and at the time appointed paid every dollar and cent of the debt. Not only was that a response of public opinion, but in addition it was a glorious tribute to the patriotism of North Carolina, a state which gave us the Mecklenburg Resolutions, anticipating the Declaration of Independence. And I can but think her conduct far above that of South Dakota, which willingly took a donation of bonds with the idea of collecting them from a sister state, in disregard of that generous feeling which should control all the states of the Union, and I do not wonder that the governor of South Dakota, who retired from office last January, in his final message recommended that the legislature appropriate the full amount of the money received and tender it back to North Carolina.[14]

[14] The amount was not repaid by the state of South Dakota. It seems that the matter came before the legislature on the recommendation of the governor, and a resolution to repay the money was lost on a close vote.

> Public opinion, Mr. President, is all powerful, and it is to the credit of the intelligent people of this country that we do respect the judgments of the courts created by the Constitution in declaring rights and awarding decrees."

In February, 1906, the state of Virginia, after having tried for many years unsuccessfully to secure from West Virginia the payment of her equitable proportion of the debt of the original state as assumed by West Virginia at the time of her creation as a separate state, filed an original bill in the Supreme Court to secure a settlement.[15] West Virginia demurred to the bill on several grounds, of which those of interest in the present connection were stated and disposed of by Chief Justice Fuller as follows:

> "But it is objected that this court has no jurisdiction because the matters set forth in the bill do not constitute such a controversy or such controversies as can be heard and determined in this court, and because the court has no power to enforce and therefore none to render any final judgment or decree herein. We think these objections are disposed of by many decisions of this court. * * *
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> "The object of the suit is a settlement with West Virginia, and to that end a determination and adjudication of the amount due by that State to Virginia; and when this court has ascertained and adjudged the proportion of the debt of the original State which it would be equitable for West Virginia to pay, it is not to be presumed on demurrer that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted we can then consider by what means the decree may be enforced. Consent to be sued was given when West Virginia was admitted into the Union, and it must be assumed that the legislature of West Virginia would in the natural course make provision for the satisfaction of any decree that may be rendered."

West Virginia now answered the bill and the litigation proceeded by easy stages, final determination of the cause being purposely deferred by the court in the hope that the controversy might be settled by negotiations between the states themselves

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[15] Virginia *v.* West Virginia, 206 U. S. 290.

without further judicial action. This hope proved vain, and in June, 1915, the Supreme Court, after having given the matter the most thorough consideration, entered a decree in favor of Virginia for $12,393,929.50, of which about two thirds was for interest. The decree provides for interest at the rate of five per cent. per annum upon the amount awarded until paid.[16]

One year later, in June, 1916, the state of Virginia petitioned the Supreme Court for a writ of execution against West Virginia, inasmuch as the latter had taken no steps whatever to provide for the payment of the decree. West Virginia resisted the granting of the execution on three grounds, namely: (1) that the state had no means of paying the judgment except through the legislature, which had not met since the judgment had been rendered, and that she should be given an opportunity to accept and abide by the decision of the court, and in the due and ordinary course to make provision for its satisfaction before any steps looking to her compulsion be taken; and (2) that presumptively the state had no property subject to execution; and (3) that although the Constitution imposed upon the court the duty and granted to it full power to consider controversies between states, and, therefore, authority to render the decree, yet with the grant of jurisdiction there was conferred no authority whatever to enforce a money judgment against a state, if in the exercise of this jurisdiction such a judgment was entered. As to these objections the court, by Chief Justice White, said:[17]

> "Without going further, we are of the opinion that the first ground furnishes adequate reason for not granting the motion at this time.
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> "The prayer for the issue of a writ of execution is therefore denied, without prejudice to the renewal of the same after the next session of the legislature of the State of West Virginia has met and had a reasonable opportunity to provide for the payment of the judgment."

The question as to whether the Supreme Court has jurisdiction to enforce its decrees against a state is to be determined, like all other judicial questions, by the court itself; though, of course, the court cannot itself enforce obedience to its decrees as

[16] 238 U. S. 202.

[17] 241 U. S. 531, 532.

against resistance on a large scale by an armed force. Where the federal courts find their authority thus opposed they may invoke the aid of the President to enforce the laws by military power. Should the President decline his assistance, the courts are, of course, powerless. The unwillingness of Jackson to enforce Marshall's judgment in the case of Worcester *v.* Georgia has already been mentioned. On the other hand, President Madison upheld the court in the case of United States *v.* Peters. President Lincoln, however, in the case of Merryman, who was held by the military authorities at Baltimore in 1861, ignored the appeal of the venerable Chief Justice Taney to enforce obedience to the court's order for Merryman's release. In this case, the release of the prisoner was refused on the ground that the President had suspended the writ of *habeas corpus;* and Taney thereupon delivered an opinion in which he held that the power to suspend the writ belonged to Congress alone, and not to the President.[18] The contest, therefore, was between the court and the President. The only instance in which the federal military power has been employed to enforce obedience to the decrees of a federal court seems to be in the case of the Chicago strikes of 1894 to suppress the riots, in connection with which President Cleveland sent federal troops to Chicago. In this case, however, the protection of the jurisdiction of the courts was only one of several objects to be accomplished by the use of the troops, the prevention of interference with the mails and with interstate commerce being the main grounds for the President's action.[19]

From a study of the foregoing cases and such other decisions of the Supreme Court as shed any light upon the subject, we may venture the following conclusions as to the enforcement of a money judgment against a state:

1. The Supreme Court has jurisdiction to render such a judgment and also jurisdiction to enforce such judgment in some way. That it has jurisdiction to render the judgment has been expressly held in several cases. The court has not yet had occasion to enforce a personal judgment against a state, nor has it

[18] Ex parte Merryman, Taney 246, Fed. Cas. 9487.

[19] In re Debbs, 158 U. S. 564. Mr. Cleveland's own account of this matter is given in his book, PRESIDENTIAL PROBLEMS.

yet declared in so many words that it can do so; but this is clearly implied in some of the language already quoted. And the fact that the court in two cases, both recent, has assumed jurisdiction to enter such judgments indicates that the court is of opinion that it can enforce them. It is, of course, true that jurisdiction to render a judgment may exist without jurisdiction to enforce the judgment. Thus, a judgment in a state court against the state is usually, if not always, of moral force only, and the only mode of obtaining satisfaction is by an appeal to the legislature for an appropriation. This is because the state waives its immunity from suit only to the extent of its consent, which is usually only to an adjudication of the claim.[20] Again, Chief Justice Marshall in the trial of Aaron Burr issued a subpœna *duces tecum* to secure from President Jefferson the production of certain papers as evidence for Burr. In so doing, he held that the court had jurisdiction and was under the duty to issue the writ, but he did not claim jurisdiction to enforce it. This point he left open and Jefferson, while denying the jurisdiction of the court to issue the subpœna, delivered the papers.

There is some room for the argument, therefore, that the jurisdiction of the Supreme Court extends no further that to render the judgment, leaving it to the state to satisfy it or not at its pleasure. There is little or nothing, however, in the decisions or opinions of the Supreme Court to support such an argument, and the whole drift of the authority is against it. The court has in every case proceeded as if it had jurisdiction to enforce the judgment. And in this connection may be noted a case before Chief Justice Taney in which the Supreme Court declined to take jurisdiction of an appeal from the Court of Claims under the statute then in force, because the statute did not give the court power to enforce its judgment. In the opinion, which was the last one prepared by Taney, it is said: [21]

> "The award of execution is a part, and an essential part of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative

[20] Railroad Co. *v.* Tennessee, 101 U. S. 337; Carter *v.* State, 42 La. Ann. 927, 8 South. 836, 21 Am. St. Rep. 404; 36 Cyc. 922.

[21] Gordon *v.* United States, 117 U. S. 697, 702.

and nugatory, leaving the aggrieved party without a remedy. * * *

"Indeed no principle of constitutional law has been more firmly established or constantly adhered to, than the one above stated—that is, that this Court has no jurisdiction in any sense where it can not render judgment in the legal sense of the term; and when it depends upon the legislature to carry its opinion into effect or not, at the pleasure of Congress."

2. The Supreme Court cannot compel the legislature of a state to levy taxes or make an appropriation to satisfy a judgment against the state. Of this proposition it seems that there can be no doubt.[22]

3. The federal courts cannot compel the officers of a state to levy and collect taxes not provided for by any law of the state.[23]

4. The federal courts may, by mandamus, compel the proper state officers in the discharge of a ministerial duty to levy and collect a tax which it is their duty under a state law to levy and collect.[24] But the officers of the state may escape the performance of the duty by resigning, as has several times happened when the federal courts have attempted in this way to enforce the payment of judgments against counties and municipal corporations.[25]

5. A federal court cannot itself levy or collect a tax to pay a judgment. This has been expressly held in the case of judgments against municipal corporations.[26] In one such case the Supreme Court, by Hunt, J., said:[27]

"We are of opinion that this court has not the power to direct a tax to be levied for the payment of these judgments. This

[22] South Dakota *v.* North Carolina, *supra.*

[23] Supervisors *v.* United States, 18 Wall. 71. See also, Ex parte Rowland, 104 U. S. 604.

[24] Board of Com'rs of Knox County *v.* Aspinwall, 24 How. 376; Riggs *v.* Johnson County, 6 Wall. 166; United States *v.* New Orleans, 98 U. S. 381.

[25] Rees *v.* Watertown, 19 Wall. 107; Heine *v.* Levee Com'rs, 19 Wall. 655.

[26] Rees *v.* Watertown, *supra;* Heine *v.* Levee Com'rs, *supra;* Meriwether *v.* Garrett, 102 U. S. 472. In each of these cases the court was divided on this question.

[27] Rees *v.* Watertown, *supra.*

power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only; and, second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. Especially is it beyond the power of the Federal Judiciary to assume the place of a State in the exercise of this authority at once so delicate and so important."

6. The property of the state held for public use cannot be taken upon execution to satisfy the judgment. This has been held in a case against a municipal corporation.[28] In this case Chief Justice Waite said:

"Property held for public uses, such as public buildings, streets, squares, parks, promenades, wharves, landing-places, fire engines, hose and hose carriages, engine-houses, engineering instruments, and generally everything held for governmental purposes, cannot be subjected to the payment of the debts of the city."

This principle has been recognized as applying also in suits against a state.

It is not perfectly clear how a corporation existing only for the benefit of the public, such as a municipal corporation, can own any property except in a public capacity or for the benefit of the public; but the distinction between the public and the private property of a municipal corporation or a state is well recognized, though not always easy to apply. It seems that all property actually in use for public or governmental purposes is exempt from execution. And with the great extension of the functions of the state in modern times so as to include education, the supplying of public utilities, etc., the amount of property so held is enormous.

7. Property belonging to a state but not held or used for public or governmental purposes may be taken upon execution to satisfy a judgment against a state. In the case against a municipal corporation last cited, Mr. Justice Field in a separate opinion said:

"What is the property of a municipal corporation which, on its dissolution, [the charter of the corporation in question

[28] Meriwether *v.* Garrett, *supra.*

> having been repealed] the courts can reach and apply to the payment of its debts? We answer, it is the private property of the corporation, that is, such as it held in its own right for profit or as a source of revenue, not charged with any public trust or use, and funds in its possession unappropriated to any specific purpose."

Accepting this as a correct statement, which it appears to be, there should ordinarily be no great difficulty in enforcing payment of a judgment for money against a state. Many of the states have large bodies of state lands, by the judicial sale of which judgments could be satisfied. Further, all states have or may have moneys in their treasuries not specifically appropriated. This may be seized upon execution. As fast as money can be collected by the state by taxation and deposited in banks it may be taken upon execution. And the state officers, no doubt, may be compelled to surrender it to the federal authorities. Where the amount of the judgment is large, it may be necessary to keep up this process for some time before the judgment is fully satisfied.

We conclude that the Supreme Court not only has jurisdiction to render judgments against a state but may enforce such judgments by ordinary judicial process. It is most unlikely, however, that the court will often have occasion to employ such means to enforce its judgments. The exalted character of the court and its inestimable importance to the people of every state give to its judgments a sanction beyond that of physical power which no state will lightly disregard, and even where the defendant state may feel aggrieved by the judgment, a sense of its own best interests will constrain it to submit without compulsion. And though the court should decline to enforce obedience, no state of the Union could for a moment afford to brand itself before its sister states as an outlaw by refusing to submit to our highest constituted authority. As pointed out by Justice Brewer in the address already quoted, "Public opinion is all powerful, and it is to the credit of the intelligent people of this country that we do respect the judgments of the courts created by the Constitution in declaring rights and awarding decrees."

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